

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**1. STATE OF OKLAHOMA, ex rel.)
W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL OF)
THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT, in)
his capacity as the TRUSTEE FOR)
NATURAL RESOURCES FOR THE)
STATE OF OKLAHOMA,)**

Plaintiff,

vs.

05-CV-0329-JOE-SAJ

**1. TYSON FOODS, INC.,)
2. TYSON POULTRY, INC.,)
3. TYSON CHICKEN, INC.,)
4. COBB-VANTRESS, INC.,)
5. AVIAGEN, INC.,)
6. CAL-MAINE FOODS, INC.)
7. CAL-MAINE FARMS, INC.)
8. CARGILL, INC.)
9. CARGILL TURKEY PRODUCTION,)
10. GEORGE'S, INC.,)
11. GEORGE'S FARMS, INC.,)
12. PETERSON FARMS, INC.,)
13. SIMMONS FOODS, INC., and)
14. WILLOW BROOK FOODS, INC.,)**

Defendants,

CARGILL TURKEY PRODUCTION, LLC,

Third-Party Plaintiff,

vs.

**CITY OF TAHLEQUAH; CITY OF
WESTVILLE,**

Third-Party Defendants.

and)
)
TYSON FOODS, INC., TYSON POULTRY,)
INC., TYSON CHICKEN, INC.,)
COBB-VANTRESS, INC., GEORGE'S, INC.)
GEORGE'S FARMS, INC., PETERSON)
FARMS, INC., SIMMONS FOODS, INC.,)
AND WILLOW BROOK FOODS, INC.,)
)
Third Party Plaintiffs,)
)
v.)
)
CITY OF TAHLEQUAH, ET AL.,)
)
Third Party Defendants.)

**ANSWER OF THE CITY OF TAHLEQUAH TO THE
CROSS-CLAIM OF CARGILL, INC. AGAINST CITY OF TAHLEQUAH, CITY OF
WESTVILLE AND CITY OF WATTS**

I. BACKGROUND

1-9. Paragraphs 1-9 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts are denied.

II. PARTIES

Cargill

10. Paragraph 10 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts is admitted.

III. Cross-Claim Defendants

11. The Cross-Claim Defendant, City of Tahlequah, admits that it is a municipal corporation in the State of Oklahoma. The City of Tahlequah denies that it discharges treated sewage and/or wastewater pursuant to NPDES permit no. OK0026964. The City of Tahlequah further denies that it has allowed the disposal of sewage sludge from its treatment plants into the IRW. **Sewage and wastewater discharge in the City of Tahlequah are handled by a separate legal entity that has not been joined in this lawsuit.** The City of Tahlequah denies that it has engaged in the practice of applying fertilizers and pesticides to properties of the City of Tahlequah within the

IRW. The City of Tahlequah denies any improper activity of the Tahlequah City Golf Course **however, the Tahlequah City Golf Course is not located in the IRW. It is located in the Grand River Watershed.** Any and all other allegation contained in this paragraph are denied.

12-13. The City of Tahlequah is without sufficient information to admit or deny the allegations contained in these paragraphs. The content of these paragraphs is therefore denied.

IV. Jurisdiction and Venue

14. The Third Party Defendant, City of Tahlequah admits that this Court has subject matter jurisdiction in this matter. The remainder of Paragraph 14 of Third Party Plaintiff's Cross-Claim is denied.

15. Paragraph 15 of Third Party Plaintiff's Cross-Claim is denied.

V. Statements of Fact

A. The Underlying Lawsuit

16-37. Paragraphs 16-37 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts are admitted.

B. General Allegations Regarding Cross-Claim Defendants

38-43. Paragraphs 28-43 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts are denied.

44. Paragraph 44 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts is admitted.

45. Paragraph 45 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts is denied.

46. Paragraph 46 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts is admitted.

47-53. Paragraphs 47-53 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts are denied.

54-56. Paragraphs 54-56 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts are admitted.

57-58. Paragraphs 57-58 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City

of Westville and City of Watts are denied.

59. Paragraph 59 of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts is admitted.

60-62. Paragraphs 60-62 and the Prayer for Relief of the Cross-Claim of Cargill, Inc., against City of Tahlequah, City of Westville and City of Watts are denied.

AFFIRMATIVE DEFENSES

1. That pursuant to Federal Rule 12 (B)3 that Venue is not proper in the United States District Court for the Northern District of Oklahoma in that this Defendant has not been accused of any activity that occurred in the Northern District of Oklahoma.
2. That all of the Illinois River located within the State of Oklahoma and all of Lake Tenkiller are located in the Eastern District of Oklahoma.
3. That approximately 12 of the named 160 Third Party Defendants have been accused of activities that occurred in the Northern District of Oklahoma.
4. That the Tahlequah City Golf Course is not located in the Illinois River watershed. It is located in the Grand River watershed.
1. That the City of Tahlequah does not operated its own water and sewage disposal facilities. These are operated by an independent party.
2. That the damages, if any, to the Third Party Plaintiffs were caused by the negligence or activities of Third Parties over whom this Defendant has no control.
3. Failure to state a claim upon which relief can be granted.
4. Lack of causation.

WHEREFORE, the City of Tahlequah prays that the Cross-Claim of Cargill Inc., against the City of Tahlequah, City of Westville and City of Watts be denied and that this Defendant be awarded Court costs and attorney's fees and such other and further relief which the Court deems just, equitable, and proper under the facts and circumstances herein.

Respectfully submitted,
City of Tahlequah

By: /s/ PARK MEDEARIS
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CERTIFICATE OF SERVICE

I certify that on the 3rd day of April, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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